IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

W.P. No. 595 of 2003 (S/B)

Ravindra Pratap Aerran,
S/o Shri Bhup Swaroop Aeeran,
R/o Nil Niknuz, 202/1 Station Road,
Purvawali, Roorkee,
District Haridwar. …… Petitioner

Versus

State of Uttar Pradesh
Through Secretary, Irrigation Department,
Secretariat, Vidhan Bhawan,
Lucknow & others. ……. Respondents

Mr. Nagesh Aggarwal, Advocate for the petitioner.
Mr. K.P. Upadhyaya, Standing Counsel for the State of Uttaranchal.
Ms. Beena Pande, Standing Counsel for the State of U.P.

Coram: Hon'ble Cyriac Joseph, C.J.
Hon'ble Rajesh Tandon J.

[Per Hon'ble Chief Justice (Oral)

1. We have heard Mr. Nagesh Agrawal, learned counsel for the petitioner, Mr. K.P.Upadhyaya, learned Standing Counsel for the State of Uttaranchal and Mrs. Beena Pande, learned counsel for the State of U.P.

2. This writ petition was admitted on 31.12.2003 and the respondents were given six weeks time to file counter affidavit. However, none of the respondents filed counter affidavit within the time stipulated by the Court. On 18.09.2004, Mrs. Beena Pande, learned Standing Counsel for the State of U.P. prayed for a further period of three weeks to file counter affidavit as last opportunity and the prayer was granted by the Court. Still no counter affidavit was filed by the respondents. When Misc. Application No. 6970 of 2004 came up for consideration on 09.12.2004, this Court directed to post the case after one week, making it clear in the order dated 09.12.2004 that if the counter affidavit is not filed within one week, the matter shall proceed without the counter affidavit. Even then the respondents did not file counter affidavit. By order dated 23.12.2004, this Court directed the respondents to consider the releasing of the commuted amount to the

petitioner within a period of six weeks. No action was taken by the respondents to implement that order. Hence, the petitioner filed Misc. Application No. 2305 of 2005 praying for a direction to the respondents to give the ‘no objection certificate’ as well as to release the commuted amount to the petitioner immediately. Nothing that the petitioner had retired from service in the year 1999, and that he has not been paid regular pension for want of ‘no objection certificate’ to be issued by the authority concerned and that the respondents have not filed any counter affidavit explaining why they could not release the commuted amount to the petitioner in compliance with the direction of the Court, this Court on 13.05.2005 directed respondents 1 to 5 to file counter affidavit, if any, positively within three weeks. It was also stated in the order that if the counter affidavit is not filed within three weeks, the Engineer-in-Chief, Irrigation Department, Lucknow (respondent no.2) and Finance Controller and Chief Accounts officer (Pension Cell), Irrigation Department, U.P., Lucknow (respondent no. 3) and the Superintending Engineer, Power House, Circle I, Irrigation Design Organization, Roorkee (respondent no.4) shall be personally present in Court on 16th June, 2005 to show cause why action should not be initiated against them under the provisions of the Contempt of Courts Act for willful disobedience of the order of the Court. Though the said period of three weeks expired on 03.06.2005, even as on today, no counter affidavit has been filed by the respondents. In the above circumstances, we are constrained to proceed with the case without waiting further for the counter affidavits of the respondents.

3. The petitioner retired from service in the year 1999. He has not been paid regular pension for want of ‘no objection certificate’ to be issued by the authority concerned. The petitioner has filed this writ petition praying for a direction to the respondents to issue ‘no objection certificate’ to the petitioner and to sanction his pension and to release the commuted amount

of Rs. 3,76,560/- with a penal interest @ 18% per annum from 31.10.1999 till the date of payment. The respondents have not chosen to file any counter affidavit explaining why ‘no objection certificate’ was not issued and why it cannot be issued. They have also not come forward to state their objection to the prayer for sanctioning pension of the petitioner and release of the commuted amount of Rs. 3,76,560/- with penal interest. Inspite of giving several opportunities and threatening to take action against them under the provisions of Contempt of Courts Act, the respondents have taken a defiant and adamant stand not to pay the pension of the petitioner and not to file counter affidavit in the case. Thus, the respondents have no case that ‘no objection certificate’ cannot be issued or that the petitioner is not entitled to full pensionery benefits. In such circumstances, we have no other option than allowing the prayers in the writ petition, as the petitioner is legally entitled to get all the pensionary benefits.

4. In the above circumstances, the writ petition is disposed of in the following terms:

(i) Respondents Nos. 1 to 3 are directed to sanction the regular pension of the petitioner within a period of three weeks from the date of receipt of a copy of this judgment, without insisting on the production of any ‘no objection certificate’.

(ii) Respondents Nos. 1 to 3 shall release to the petitioner the commuted amount of Rs. 3,76,560/- with interest @ 9% per annum from 31.10.1999 till the date of payment. The amount as above shall be paid within three weeks from the date of receipt of a copy of this judgment.

(iii) On sanctioning regular pension of the petitioner, the arrears, if any, of the pension shall be paid to the petitioner within one month from the date of sanctioning of pension.

(iv) Considering the conduct of respondents Nos. 1 to 3, the State of U.P. shall pay costs of Rs. 25,000/- to the petitioner within three weeks from the date of receipt of a copy of this judgment.

(V) The first respondent is directed to recover the amount of Rs. 25,000/- paid as costs to the petitioner from the officers who were responsible for the failure to file counter affidavit in the case. The recovery so made shall be reported to this Court within three months from today.

5. The Registry is directed to forward a copy of this judgment to the first respondent forthwith.

(Rajesh Tandon, J.) **(Cyriac Joseph, C.J.)**
16.06.2005 **16.06.2005**

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